

SERVICE DATE - MARCH 19, 2002

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 145X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT  
EXEMPTION—IN STANISLAUS COUNTY, CA

Decided: March 14, 2002

Union Pacific Railroad Company (UP) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances of Service and Trackage Rights to abandon a 5.62-mile line of railroad over the Tidewater Subdivision from milepost 26.43 near McHenry to milepost 32.05 in Modesto, in Stanislaus County, CA. Notice of the exemption was served and published in the Federal Register on April 14, 2000 (65 FR 20263-64).

By decision and notice of interim trail use or abandonment (NITU) served May 15, 2000 (May Decision),<sup>1</sup> the exemption was conditioned on the requirement that UP consult with the California Department of Toxic Substances Control (DTSC) and comply with the Department's request to complete a Preliminary Endangerment Assessment covering the line prior to commencing salvage operations.

On May 30, 2001, UP submitted a letter addressing DTSC's environmental condition imposed in the May Decision. In its letter, UP also informed the Board that it had fully abandoned the southern segment of the right-of-way from milepost 30.63 to milepost 32.05, effective May 29, 2001, and that DTSC's condition applied only to the northern segment, based on a May 15, 2001 letter received from DTSC. However, DTSC informed UP in its May 15, 2001 letter that abandonment of the Tuolumne River Bridge on the southern segment of the right-of-way is subject to the conditions that: "any waste wood generated by UP should be evaluated to determine proper handling and disposal procedures" and "[w]hen the rails are removed from the city street, a risk management plan should be utilized to control any dust that may be generated from the activity. If any waste wood is generated from the removal, it should be handled and disposed of in the same manner as wood from the bridge."

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<sup>1</sup> The NITU issued under 49 CFR 1152.29 and the National Trails System Act, 16 U.S.C. 1247(d), provided a 180-day period for the City of Modesto (City) to negotiate an interim trail use/rail banking agreement with UP for the portion of the right-of-way between milepost  $\pm 26.43$  (a point 30 feet north of the north line of the proposed Pelandale Expressway) and milepost  $\pm 30.63$  (at Needham Street). The NITU negotiating period was subsequently extended to May 7, 2002, by decisions served October 23, 2000, April 26, 2001, and October 31, 2001.

On January 14, 2002, UP submitted a second letter stating that it had complied with DTSC's condition and requesting that the condition be removed. In support of its request, UP attached a letter, which included indication of DTSC's finding of a "No Further Action" status for the northern segment of the right-of-way. SEA states that a SEA staff member consulted with a DTSC Hazardous Substances Scientist and, because the Tuolumne River Bridge had been destroyed by fire, recommendations regarding the bridge would no longer be applicable. However, SEA states that, as recommended by DTSC, UP would still be required to implement dust control measures during salvage and to properly dispose of any waste wood.<sup>2</sup> Based upon SEA's review of the information provided by UP and consultation with DTSC's Hazardous Substances Scientist, SEA recommends that the DTSC's condition imposed in the May 15 decision be removed. Accordingly, the proceeding will be reopened and the previously imposed DTSC condition will be removed.<sup>3</sup>

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. Upon reconsideration, the DTSC condition imposed in the decision served May 15, 2000, is removed.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams  
Secretary

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<sup>2</sup> SEA notes that DTSC stated that UP have been notified to take those measures during salvage activities and therefore, no further consultation is necessary with DTSC regarding implementation.

<sup>3</sup> The May 15 decision imposed two other conditions that required UP to: (1) consult with the National Geodetic Survey (NGS) and provide NGS with 90 days' notice prior to disturbing or destroying any geodetic station markers; and (2) consult with the Resources Board of the State of California prior to conducting salvage operations to determine if permits are required under California statutes. Those conditions remain.